

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO, ex rel.)	
State Engineer,)	No. 69 CV 07941 MV/KK
)	
Plaintiff,)	Rio Chama Adjudication
)	
v.)	Pueblo Claims Subproceeding 1
)	
ROMAN ARAGON, et al.,)	
)	
Defendants.)	
_____)	

JOINT STATUS REPORT

Pursuant to this Court’s Order of June 23, 2021 (Document 11592), the undersigned Parties submit this Joint Status Report regarding negotiations to try to resolve the water rights claims of Ohkay Owingeh in both *Aragon* and *Abbott*, and the water rights claims of Santa Clara Pueblo in *Abbott*. This Joint Status Report is being filed simultaneously in the companion case styled *State of New Mexico ex rel. State Engineer v. Abbott*, No. 68-CV-07488 (MV/JHR).

1. Progress in Settlement Negotiations

Settlement discussion have continued under work plans developed by the mediators and approved by the Parties. There are active discussions around issues addressed by smaller working groups. There are six such groups, including two technical committees, actively working on various aspects of Ohkay Owingeh’s settlement proposals and considerable technical work is underway that pertains to potential settlement components for both Pueblos. Since the last joint status report, the settlement Parties and the mediators have conducted 44 virtual meetings and/or telephonic meetings, in various combinations of Parties and their counsel, depending on the settlement issue. Some of the meetings address *Abbott* issues, some address

Aragon issues, and some of the meetings pertain to settlement issues affecting both cases and both Pueblos. The Parties have also met virtually as a full group each month since the last report, in most cases in morning and afternoon sessions.

The mediators prepare meeting agendas, prepare work plans and revise such plans as appropriate in light of the progress of the discussions, assign responsibilities to specific parties, check on the Parties' progress, convene meetings both to move discussions forward and to report progress, and prepare summaries of meetings. The mediators have conducted separate discussions with each of the Parties as necessary to advance the discussions.

Progress continues to be made on each of the components of an overall settlement for Ohkay Owingeh. Discussions during this period of the stay included: 1) water delivery mechanisms to enable Ohkay Owingeh to restore and maintain its bosque areas on its Grant lands in the Rio Chama stream system; 2) provisions of a Partial Final Judgment and Decree that will adjudicate Ohkay Owingeh's water rights in the Rio Chama stream system; 3) feasible and enforceable shortage sharing arrangements among the acequias and Ohkay Owingeh in the Rio Chama stream system; 4) exploration of potential additional sources of water in the Rio Chama for future use; 5) obtaining data relevant to resolving issues related to water use by Ohkay Owingeh and the City of Española as neighboring jurisdictions, with data on groundwater depletions in the Aragon adjudication and by Santa Clara Pueblo yet to be addressed; and 6) a uniform methodology for defining irrigation water requirements for the Rio Chama stream system.

In the Rio Santa Cruz watershed in the *Abbott* case, technical consultants for the United States, the Santa Cruz Irrigation District and Santa Cruz Stream Systems Community Ditch Association, the La Acequia de la Sierra (aka Truchas Acequias), Santa Clara Pueblo, and Ohkay

Owinge are working on identifying and filling data gaps related to the water resources in the stream system. They have identified a number of technical tasks that may assist in developing physical solutions to water supply challenges and are beginning certain assessments related to those tasks. The Pueblos and Santa Cruz Stream Systems Community Ditch Association anticipate having discussions in the new year related to certain potential settlement concepts. In addition, Ohkay Owinge, Santa Clara Pueblo, and the United States are discussing issues of common concern that relate to resolution of the water rights claims of both Pueblos, and that of the United States as trustee for both Pueblos, in the above-referenced case.

Because of the pandemic there have been some delays in contracting and getting necessary field work done related to updating Santa Clara Pueblo's water rights claims and in assessing potential "wet water" solutions to assist in resolving those claims. Even with the delays, however, there has been significant progress and both Santa Clara Pueblo and the United States anticipate that additional necessary technical studies will get underway in earnest in the new year.

2. Scheduling of Dispositive Motions

The undersigned Parties continue to believe that the resumption of litigation would hamper their efforts to resolve Ohkay Owinge's and Santa Clara Pueblo's water rights claims through negotiation. The undersigned Parties continue to be committed to the negotiation process. Therefore, they do not anticipate the need for this Court to schedule the filing and briefing of dispositive motions within the next six months.

3. Rescheduling the Trial

For the same reasons, the undersigned Parties do not believe that the trial of Ohkay Owinge's water rights claims in this Subproceeding should be scheduled at this time.

4. Expectations on Timing of Settlement

Progress toward a settlement continues to be made. The Parties, with the mediators' assistance, are working diligently to increase the pace of the negotiations and the achievement of milestones toward settlement. A comprehensive settlement of both Pueblos' claims and those of the United States within two years appears to the Parties to be a reasonable target date.

5. Other Matters

The undersigned parties suggest that the Court require the filing of a joint status report six months from now, on June 10, 2022, at which time they will report to the Court on their progress and on the question of whether dispositive motions should be scheduled, or litigation should otherwise resume.

The United States did not respond to Ohkay Owingeh's request to join this Joint Status Report.

Dated: December 10, 2021

Respectfully submitted,

/s/ Curtis G. Berkey

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of December, 2021, I filed the foregoing electronically through the CM/ECF system, which caused the parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail.

/s/ Curtis G. Berkey

Curtis G. Berkey